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STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Written statement submitted by the Transnational Radical Party, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[7 March 1997]

1. An increasing number of countries have decided to abide by the constraints imposed on the application of the death penalty by international conventions. In effect, the four documents of international law whose contents are openly abolitionist have already been ratified by nearly 50 States that are now obliged not to apply the death penalty. The aforementioned documents are: the well-known Second Protocol to the International Covenant on Civil and Political Rights, the Sixth Protocol to the European Convention on Human Rights, the Optional Protocol to the American Convention on Human Rights for the abolition of the death penalty and the American Convention on Human Rights. The United Nations has surely contributed to reaching this outcome.

2. In order to strengthen this process and to promote the concept that restricting and abolishing the death penalty must be the core of the development of human rights regulations, both in the United Nations system and in international law, the Transnational Radical Party, through its international campaign for the abolition of the death penalty, called "Hands off Cain" (a citizens' and parliamentarians' league for the abolition of the death penalty worldwide by the year 2000), has decided to support the presentation and the discussion in the Commission on Human Rights of a resolution on the death penalty.

3. Particularly, with its campaign for the abolition of the death penalty "Hands off Cain", the Transnational Radical Party thinks that, just as slavery and torture were abolished a century ago, today, at the dawn of the third millennium, it is important to acknowledge a new principle of juridical civilization, i.e., that no democratic State can dispose of its citizens' lives. The acceptance of such a principle would be an important contribution to the development of an international law that exclusively and genuinely follows universal principles, instead of being based on the supremacy of one culture over others or on multifarious compromises.

4. So far, the abolitionist standings of the States have been affirmed within the United Nations through the acknowledgement of the right to life of everyone. This is the wording of article 3 of the Universal Declaration of Human Rights, article 6 of the International Covenant on Civil and Political Rights and articles 6 and 37 of the Convention on the Rights of the Child. However, these regulations do not specifically prohibit the death penalty, since they are a sort of compromise reached by the States that at that time thought it better not to specifically ban the death penalty. Nonetheless, through General Assembly resolution 2857 (XXVI) and, later on, through its resolution 44/128 of 15 December 1989, in which the Second Optional Protocol to the Covenant on Civil and Political Rights was adopted and opened to signature, the United Nations expressed its abolitionist commitment. In fact, article 2 specifically prohibits the application of the death penalty to the signatory States.

5. Later on, through a series of resolutions, the Economic and Social Council emphasized the importance of gradually reducing capital crimes in order to reach the definitive abolition of the death penalty (resolutions 1574 (L), 1745 (LIV), 1930 (LVIII), 1984/50, 1985/33, 1990/29 and 1990/51).

6. In such a framework, the United Nations has expressed a precise abolitionist orientation in the new acts that have been adopted, but it is also worth recalling the 1982 General Comment of the Human Rights Committee on article 6 of the International Covenant on Civil and Political Rights that strengthened the reading of this article from an abolitionist point of view, thus helping shape the course of further United Nations activities.

7. Afterwards, other documents were adopted, imposing an absolute ban on the application of the death penalty, leaving out of consideration references to the right to life and having binding legal effect for all States. These documents are the statutes approved by the United Nations Security Council for the establishment of ad hoc tribunals to judge war crimes committed in Rwanda and the former Yugoslavia. (Statute of the Tribunal for the Former Yugoslavia 827 (1993), annex, art. 24; Statute of the International Tribunal for Rwanda 955 (1994), annex, art. 23). These acts, being Security Council resolutions, are binding for all States; nonetheless they create a great contradiction since, countries like China, the Russian Federation and the United States of America have excluded the death penalty from international law against the horrific crimes committed during the wars that tore apart the former Yugoslavia and Rwanda, but they go on applying it within their borders to absolutely less serious crimes. However, this is not an isolated example. In fact, the statute for a permanent international criminal court, now being

examined by the Committee charged with preparing the founding conference of such an international jurisdiction, excludes the death penalty as well (A/49/10, chap. II.B, art. 47).

8. It is important to remember that the debates taking place within United Nations bodies on the absence of the death penalty from the statutes of these tribunals show that this argument is, by now, irrefutable. On the one hand, it is too early to affirm the existence of a universal rule forbidding the application of the death penalty; on the other hand, the regulations excluding or limiting it are widely accepted, which makes it possible to talk of "soft law". These developments, which occurred within the United Nations, have surely affected the policies of States with regard to the death penalty. In fact, as the report of the Secretary-General (E/CN.15/1996/19) on the death penalty shows, since 1989, as many as 25 countries have abolished the death penalty, 23 of them for all crimes, including those committed in wartime.

9. From the point of view of international law, the acceptance of international abolitionist regulations makes it possible for us to affirm that: recent resolutions of the United Nations General Assembly and other international bodies confirm that the regulations earlier included in international conventions, limiting the application of the death penalty to the most serious crimes and excluding it in the case of minors, pregnant women and mentally retarded people, have now acquired the status of customary laws having binding effect for all the States that have undertaken to abide by them.

10. The Transnational Radical Party, with its campaign "Hands off Cain", underlines the importance of the United Nations continuing to call for a moratorium on capital executions as an intermediary and resolute step towards achieving the abolition of the death penalty by the end of this millennium. Recent data show that the moratorium can be a political and juridical tool allowing States to take their own time and verify the uselessness of the death penalty. From this point of view, South Africa is an emblematic example. At the end of the 1980s, this country was literally torn apart by civil war and recorded one of the highest rates of application of the death penalty. After a decision to impose a five-year moratorium on capital executions had been taken, the country eventually abolished the death penalty in 1995, as established in its new Constitution.

11. The United Nations has also chosen the right tool to support abolitionist policies; a moratorium. In 1968, the Commission on Human Rights invited States to abide by a six-month moratorium before carrying out a capital sentence (E/4475); (E/CN.4/972 paras. 134-136, 162-164). This resolution was later approved by the General Assembly with some amendments (resolution 2393 (XXIII); A/PV.1727).

12. This attempt was repeated in 1994, when, during the forty-ninth session of the General Assembly, a resolution requesting a universal moratorium on capital punishment was presented as an intermediate step to reaching and affirming, by the year 2000, that no democratic State should execute its own citizens. The resolution was rejected by only eight votes after Singapore, a retentive State, presented an amendment, which was approved, requesting that any mention of international rights and the United Nations system be removed, thus effectively defeating the purpose of the resolution.

13. The Transnational Radical Party, through its campaign "Hands off Cain" had undertaken many actions in favour of the moratorium during the months prior to the discussion in the General Assembly; a petition to the United Nations collected thousands of signatures all around the world. Some days before the debate, the New York Times published an advertisement on the initiative, and, in the crucial moments, the government delegations which had gathered in New York received many faxes with messages from all over the world. "A revolutionary event in the history of the United Nations": that was the impression of the Secretary-General, Dr. Boutros Boutros Ghali, on the mobilization of citizens and parliamentarians who participated, in that way, in the United Nations General Assembly.

14. After the 1994 vote in the General Assembly, the Transnational Radical Party started a campaign called "Hands off Cain, 10 countries, 100 cities, 100,000 signatures at the United Nations to stop the death penalty", aimed at reproposing the resolution to the United Nations with a wider range of sponsoring States, as well as supporting NGOs and other institutions.

15. On the side of the international institutions, we reported the approval of the moratorium resolution by the parliament of Latin America, in December 1995; on 27 September 1996 the Joint Assembly of the African, Caribbean and Pacific Group (ACP) and the 15 European Union (EU), approved a resolution, in which the member States (65 ACP countries, as well as 15 EU member States) asked the other members of the Lomé Convention still applying the death penalty to impose a three-year moratorium.

16. Even more interesting is the policy adopted by the European Council, which in the past few years, has vetoed the admission of Eastern European countries unless they have abolished the death penalty, or prior to the immediate introduction of a moratorium on executions. Hence, it is worth recalling recommendation No. 1302 (1996) and resolution No. 1097 (1996) of the European Council Parliamentary Assembly on the abolition of the death penalty in Europe. It is important to note that after the adoption of a resolution on 28 January 1997 on the death penalty in the Russia Federation and Ukraine, President Yeltsin decided to abolish the death penalty.

17. The European Parliament has also actively worked on the front of the abolition of the death penalty, with its resolutions of 18 June 1981 on the abolition of the death penalty within the European Community; of 17 January 1986 on the abolition of the death penalty and the access to the Sixth Protocol to the European Convention on Human Rights and the resolution on the death penalty of 12 March 1992, which affirmed, for the first time, the right of citizens to freedom from State execution. In accordance with this approach, the European Parliament recently adopted a resolution inviting member States to insist that the United Nations Commission on Human Rights support a resolution calling for a universal moratorium on capital punishment.

18. Taking into account these data and remembering the experience of the vote in the General Assembly in 1994, the Transnational Radical Party with its

campaign "Hands off Cain" asks the Commission to adopt, as an intermediary step, a resolution on a moratorium on capital executions. In order for the problem of the death penalty to be fully part of human rights, the Commission must set up monitoring action on this matter. Thus, it would be hoped that the Secretary-General would submit a yearly report to the Commission on decisions taken with regard to the death penalty, analysing the policies and the reasons underlying the decisions of the various States, international organizations and the non-governmental organizations.